

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2004)	MD Docket No. 04-73
)	

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”)² to comment on matters relevant to the assessment and collection of Fiscal Year (“FY”) 2004 regulatory fees. Among other matters, the FCC invited input on the fee assessment for Commercial Mobile Radio Services (“CMRS”) cellular and mobile service providers.

Introduction

The Commission may prescribe and collect regulatory fees by authority set forth in Title VI, 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 397) , enacting Section 9 of the Communications Act, 47 USC §159. The Commission is directed to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain regulatory activities in the private radio, mass media, common carrier, and cable television services. The fees are to be established at amounts that will result in collection, during each fiscal year, of an

¹ RCA is an association representing the interests of over 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² *Notice of Proposed Rulemaking*, MD Docket No. 04-73, FCC 04-66, released March 29, 2004 (“*NPRM*”).

amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of enforcement activities, policy and rulemaking activities, user information services, and international activities.

For FY 2004 the *NPRM* provides that the fees for each category of service are to be adjusted upward by 1.5 percent over FY 2003 to reach the total amount that must be collected in regulatory fee revenues.³ RCA is interested in the unit subscriber fee proposed to be assessed for CMRS Mobile services, the manner of collection, and the impact upon wireless service providers and consumers in rural areas.

A. The CMRS Mobile Subscriber Unit Fee Should Be Less than \$0.26

The amount of FY 2004 revenue required to be collected for CMRS Mobile service is identified in Attachment C of the *NPRM* as \$38,678,954, which is proposed to be collected by charging a unit subscriber fee of \$0.26. The unit subscriber fee (\$0.26) is unchanged from FY 2003. Rather than raise the unit fee, increased revenue is expected to be achieved by virtue of subscriber unit growth in the CMRS industry.⁴

The equation seems reasonable prior to a close reading of the figures in Attachment C. The FCC projects that the number of CMRS subscriber units will grow from about 141,800,000 in FY 2003 to 151,000,000 in FY 2004. This is about a 6.5 percent increase in payment units, which would result in a 6.5 percent increase regulatory fee revenues for FY 2004 over FY 2003. The FCC, at Attachment C, projects FY 2004 revenue of \$39,260,000, which is in fact 6.5 percent greater than last year's FY 2003 revenue. The projected FY 2004 revenue is also 1.5 percent greater than what

³ *NPRM*, at para. 2.

⁴ *NPRM*, at para. 2, fn. 2.

the FCC states as required FY 2004 revenue, \$38,678,954.

No explanation is offered within the text of the NPRM for the differential between the stated goal of a 1.5 percent increase in projected revenue for each category from FY 2003 to FY 2004, and the proposed 6.5 percent increase in projected revenue to be collected in the CMRS Mobile Services category. The difference is too great to flow from rounding or slightly adjusting to account for variables, as suggested by the description of adjustments to payment units provided in the *NPRM*.⁵

If revenue requirements are increased by 1.5 percent for FY 2004, and the number of CMRS Mobile payment units is expected to increase by 6.5 percent, the Commission should credit the CMRS Mobile category with a 5 percent reduction in the payment unit fee. The appropriate FY 2004 unit fee is rightfully closer to \$0.25 per subscriber unit, than to the proposed fee of \$0.26 per subscriber unit.

B. Use of NRUF Data Will Lead to Unfair Regulatory Fee Assessments

The Commission proposes procedural changes for notification, assessment and collection of regulatory fees. Assessments for CMRS cellular and mobile service providers are proposed to be based upon information provided in the *Numbering Resource Utilization Forecast* (NRUF) report.⁶ The Commission would use data from the NRUF report to determine the amount of each regulatory fee obligation. The resulting assessments would be mailed to service providers, who would then complete and submit FCC Remittance Advice Form 159 ("FCC Form 159"). Comment is sought upon "the use of NRUF data as it relates to the subscriber basis upon which wireless cellular/mobile

⁵ *NPRM*, at para. 3.

⁶ *Numbering Resource Utilization in the United States as of June 30, 2003*, prepared by the Industry Analysis and Technology Division, Federal Communications Commission (December 2003).

regulatory fees are calculated.”⁷

While the intent of the proposal may be to improve the predictability of Commission revenues and service provider obligations, use of NRUF data to calculate each and every provider’s fee assessment is unfair to small carriers and is likely to prove unmanageable. The NRUF report identified in the *NPRM* does not provide individual carrier data. Perhaps the Commission has access to NRUF records not available to the public, but the present proposal is flawed in that carriers are not provided with a resource to check to make sure the reported data is correct. Nor is there any proposed mechanism whereby service providers can verify the accuracy of reported data or challenge the Commission’s resulting assessment. The veracity of carriers’ certified subscriber counts has never been an issue that demands that FCC counts replace carrier counts. Small carriers, particularly, are disadvantaged by the proposed change because they have limited resources to counteract an inaccurate FCC estimate of payment units. The FCC has expressed no need to replace small carriers’ counts with FCC estimates.

The assessment proposal does not streamline CMRS carriers’ payment of regulatory fees. No assistance is offered to prepare carriers for what the assessment will be, how it will be calculated exactly, or how the carrier can correct a false assessment. As an alternative example, the *NPRM* offers small cable television service providers the chance to check primary data sources for the number of subscribers for which they will be charged regulatory fees. Cable operators are even provided with an FCC telephone number to call to obtain their subscriber count. If the figure is unavailable, the cable operator may simply enter and certify its own subscriber figure on FCC Form 159.⁸ Cellular carriers, by contrast, are provided no advance figure, only an assessment to be paid

⁷ *NPRM*, at para. 20.

⁸ *NPRM*, page 6. Primary sources for cable television subscriber counts will include the *Broadcasting and Cable Yearbook* and industry statistics publicized by the National Cable and Telecommunications Association.

imminently. The *NPRM* sets forth no prescribed procedure by which a carrier may correct an assessment before payment is due, nor does the proposal provide any streamlined refund mechanism.

The *NPRM* provides no explanation of which NRUF data will be used to derive carriers' payment unit figures. The NRUF report delineates five categories of numbers. The *NPRM* does not describe which of these categories will be utilized for regulatory fee assessment. This lack of clarity creates the potential for gross miscalculation of payment units and resulting assessments.

The five NRUF number categories are as follows:

Assigned – Numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending for no more than five days.

Intermediate – Numbers that are made available for use by another telecommunications carriers or non-carrier entity for the purpose of providing telecommunications service to an end user or customer.

Reserved – Numbers that are held by service providers at the request of specific end users or customers for their future use for no more than 45 days.

Aging – Disconnected numbers that are not available for assignment to another end user or customer for a specified period of time, not exceeding 90 days for residential customers and 365 days for business customers.

Administrative – Numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.⁹

Carriers report numbers in each of these categories semi-annually on utilization and forecast reports submitted to the North American Numbering Plan Administrator, using FCC Form 502 – Numbering Resource Utilization/Forecast Report. Some of the collected data is blocked out of

⁹ NRUF report as of June 30, 2003, page 4. The categories are reflective of those defined in Section 52.15(f)(1) of FCC rules, 47 C.F.R. §52.15. A sixth category, "Available," is automatically calculated for the NRUF Report. Available numbers those available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.

NRUF reports to prevent the potential release of non-public data. Blocked data includes the number of assigned telephone numbers and the number of thousands blocks reported in a carrier's rate center.¹⁰

Conceivably, the FCC has access to non-public data within the NRUF report by which the agency could derive a carrier's regulatory fee assessment. However, the FCC has not explained the process it would use to do this, or the categories of numbers, which it would count for purposes of regulatory fee assessment.

RCA submits that using any NRUF category other than Assigned Numbers would unfairly harm CMRS providers, who are required to pay regulatory fees only for subscriber telephone numbers/units. "Assigned" numbers are active and in use by subscribers, and are subject to regulatory fees. On the other hand, "Intermediate" numbers are in use by a carrier other than the reporting carrier, "Reserved" numbers are not yet in use, "Aging" numbers have been removed from use, and "Administrative" numbers are not used by paying subscribers. "Available" numbers is far greater than the number of units in use. These five categories of numbers should not be subjected to regulatory fees; they should be exempt from any calculation of a carrier's payment units. **If NRUF data is used at all, payment units should consist only of "Assigned" numbers.**

As part of this consideration, it would be unfair to assess CMRS carriers for any numbers that are pooled but not in use by wireless subscribers. CMRS carriers who are affiliated with landline exchange companies ("LECs"), for example, would be vulnerable to excessive regulatory fee assessments if the FCC were to count as payment units those numbers that are Type I numbers, since often only a miniscule portion of those numbers is actually used by wireless subscribers. Likewise, carriers who subscribe to 10,000 blocks of Type II numbers in order to support local number

10 NRUF report as of June 30, 2003, page 10.

portability could be punished with a regulatory fee assessment on all 10,000 numbers. In rural areas of America, wireless providers often use as few as 100 out of a 10,000 block of numbers to serve subscribers. The 10,000 blocks are required to support local routing number processes, but in rural areas far fewer than 10,000 numbers are typically assigned to revenue producing subscribers. Pooled blocks of numbers should not be counted as payable units. Only subscribed numbers should be counted in assessing regulatory fees.

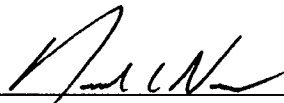
Perhaps the FCC has a plan to filter NRUF data to achieve fair and accurate payment unit counts. If so, the calculation process should be explained and comment upon it should be received from interested parties. At the very least, CMRS service providers should be afforded the opportunity to review and approve an assessed unit count before being invoiced for payment of regulatory fees. Challenges to the count should be simple for carriers to submit and should be quickly processed by FCC staff. The best course of all would be to leave unchanged the regulatory fee collection process for FY 2004. Carriers should simply certify on Form 159 the number of payment units as of December 31, 2003, and pay accordingly the required cents per unit.

Conclusion

RCA urges the Commission to reduce the CMRS regulatory fee to comport with revenue requirements. The proposed switch from self certification to mailed assessments should be preceded by specific identification of the subscriber basis upon which wireless cellular/mobile fees are to be calculated, and by an opportunity for comment on the criteria. Exorbitant fees and complicated processes for challenging assessments should be avoided. These actions will enhance the fairness of the regulatory fee system, and will reduce the potential for harmful impact on small, rural carriers.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION



David L. Nace
Pamela L. Gist

Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 857-3500

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